

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

STEVEN MCCLAIN & CHARLES E. WILSON
Respondent

Case No.: I-00-70321

FINAL ORDER

I. Introduction

On August 21, 2001, the Government served a Notice of Infraction upon Respondents Steven McClain and Charles E. Wilson, alleging that they violated 22 DCMR 107.1, which permits the Department of Health to issue orders to owners or occupants of buildings requiring them to take specified measures to prevent rat infestation or to exterminate rats present at their property. The Notice of Infraction alleged that the violation occurred on August 20, 2001 at 1906 R Street, N.W. and sought a fine of \$1,000.

Respondents filed a timely plea of Admit with Explanation requesting a suspension or reduction of the fine. On September 19, 2001, I issued an order permitting the Government to reply to Respondents' plea and request within ten days. The Government filed a timely response objecting to any reduction of the fine.

II. Summary of the Evidence

Respondents admit that they have not eliminated the rat problem at their building, but list a number of actions they have taken to rid the building of rats, including using a sealed trash can for all food trash, pouring gasoline down rat holes and sealing them, and using rat poison in certain areas of the building. They assert that their building shares a rear alley with several restaurants and that the restaurants' failure to take appropriate rat control steps has resulted in the continuation of the problem at their property. They express a willingness to try whatever additional rat control suggestions may be offered.

The Government responds that the rat problem at Respondents' property occurs in front of the building, not in the portion that borders the rear alley. The Government also asserts that the nearest restaurant is half a block away and that it is "pretty clean," suggesting that the restaurant does not contribute to the rat problem at Respondents' building.

III. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 22 DCMR 107.1 on August 20, 2001.
2. On August 20, 2001, Respondents had not complied with an order from the Department of Health to take specific actions to control or eliminate rats at the property located at 1906 R Street, N.W.
3. Respondents have taken some steps to control rats at their property in an effort to comply with the applicable regulations.

4. Respondents' effort to shift the blame entirely to nearby restaurants is unconvincing in light of the evidence that the problem exists in areas of Respondents' property that are not likely to have been influenced by the restaurant's actions.
5. There is no evidence that Respondents have a history of prior violations.

IV. Conclusions of Law

1. The Department of Health is authorized by 22 DCMR 107.1 to issue orders requiring property owners to take certain steps to prevent rat infestation and to eliminate any existing infestation of rats. Failure to comply with any such order is a Class 1 infraction, punishable by a fine of \$1,000. 16 DCMR 3216.1(j). Respondents' failure to comply with the Department of Health's order subjects them to that fine.
2. The record does not support suspension of the fine, but the mitigating factors established by the evidence warrant a reduction of the fine amount. Those factors include Respondents' lack of a prior history of non-compliance and their efforts to attempt to comply. Consequently, the fine shall be reduced to \$750.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **SEVEN HUNDRED FIFTY DOLLARS (\$750)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03 (i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 6-1801.03 (b)(7).

/s/ **1/11/02**

John P. Dean
Administrative Judge